EVIDENCE—DECLARATIONS AS TO PEDIGREE.—In a suit for the partition of real estate, it was contended that G, who died seized of the property, was related to plaintiff, and in support of this contention witnesses were introduced who testified to declarations of G affirming such relationship. Evidence of these declarations was resisted on the ground that there was no independent proof that G was related by blood or marriage to the family to which the declarations referred. *Held,* that evidence of the declarations was, under the circumstances of this case, admissible. *Jarchow et al.* v. *Grosse* (Ill. 1912) 100 N. E. 290.

The court, while acknowledging the general rule that proof of the relationship of the declarant must be made dehors the declaration before evidence of the latter will be admissible, still asserts that "where it is sought to reach the estate of the declarant himself, and not to establish a right, through him, to the property of others, his declarations with reference to his family and kindred have been held admissible, though the relationship is not shown by other evidence." In relation to this topic the case of *Monkton* v. *Att'y-Gen'l,* 2 Russ. & M. 147, is applicable. Lord Chancellor BROUGHAM there states, "this documentary account was objected to, as not falling within the rule which admits hearsay or declarations of deceased persons in a question of pedigree, because (it was insisted) you must first give evidence dehors the declarations, to connect them with the parties respecting whom the declarations are to be tendered. I entirely agree, that in order to admit hearsay evidence in pedigree, you must, by evidence dehors the declarations, connect the person making them with the family. But I cannot go to the length of holding, that you must prove him to be connected with both the branches of the family, touching which his declaration is tendered. That he is connected with the family is sufficient; and that connection once proved, his declarations are then let in upon questions touching that family. * * * It is not more true that things which are equal to the same thing are equal to one another than that persons related by blood to the same individual are more or less related to each other." The declaration must have been uttered freely and naturally with no thought of future profit. Inscriptions upon tombstones, engravings upon rings, and similar evidence are admissible "upon the principle that they are the natural effusions of a party who must know the truth, and who speaks upon an occasion when his mind stands in an even position, without any temptation to exceed or fall short of the truth," *Whitelock* v. *Baker,* 13 Ves. 514; *Vowles* v. *Young,* 13 Ves. 140.

EVIDENCE—EXPERT TESTIMONY.—The admissibility of the opinion of an expert medical witness in respect to the extent of plaintiff's injury, the ailments claimed to have arisen therefrom, and their permanency, was involved. It appeared that the witness had never treated the plaintiff professionally, that he had, however, made two examinations for the purpose of qualifying as an expert witness, that at the time of such examinations there were no visible evidences of the injury, and that the opinion was founded upon the conditions then observed as well as upon the answers of the plaintiff to

certain inquiries made by the witness. The supreme court, deeming the opinion to have been based principally on plaintiff's statement of past conditions, *held,* the admission was reversible error. *Hintz* v. *Wagner* (N. D. 1913) 140 N. W. 729.

In delivering the opinion of the court Chief Justice SPALDING said that the testimony of expert witnesses should, in general, be confined to the result of their actual investigations, and not based upon hearsay evidence, self-serving declarations, or statements of other parties made under circumstances admitting of coloration or exaggeration for its effect upon the verdict." In this connection see *Vosburg* v. *Putney,* 78 Wis. 84; *Chicago & E. I. R. Co.* v. *Donworth,* 203 Ill. 192; *West Chicago St. R. R. Co.* v. *Carr,* 170 Ill. 478. In *Federal Betterment Co.* v. *Reeves,* 73 Kan. 107, 4 L. R. A. N. S. 460, the principle is thus stated, "The witness was an expert who under the rules of evidence might give his opinion based either on facts testified to by others, or upon hypothetical questions put to him, or upon an examination of the patient; but he could not testify to conclusions arrived at from the history of the case given him by the patient or others. * * * Nor can a physician give his opinion based partially upon what he has been told of the case, and partially upon what information he obtained by an examination of the patient."

HUSBAND AND WIFE—POWER OF HUSBAND TO DISPOSE OF HIS PERSONALTY BY GIFT CAUSA MORTIS.—Decedent had made provision in his will for leaving a large part of his estate to charitable uses. During his last illness, upon being advised that his wife would still be entitled to her share of the property in spite of the will, he executed and delivered assignments of certain stocks and bonds to trustees upon the same trusts as stated in the will, with the provision that the income from said stocks and bonds should be paid to him during his life. The widow, having elected not to take under the will, brought suit to have said assignments set aside. *Held,* the assignments constituted gifts *causa mortis,* but were invalid, because the husband cannot deprive his wife of her dower rights in his personalty by such a transfer. *Crawfordsville Trust Co.* v. *Ramsey,* (Ind. App. 1913) 100 N. E. 1049.

Vosberg v. *Mallory et al.* (Ia. 1912), 135 N. W. 577, is opposed to the principal case. For a discussion of the conflict on this question, see a note on the *Vosberg* case in 10 MICH. L. REV. 652.

INSURANCE—LIABILITY IN TORT FOR NEGLIGENT DELAY IN FORWARDING APPLICATION. Through the negligence of the general agent who solicited the application, the same was not forwarded to the head office after a satisfactory medical examination had been passed, until after the applicant died. *Held,* the personal representatives of the deceased may recover the value of the policy as damages in an action in tort. *Duffie* v. *Banker's Life Association of Des Moines* (Iowa, 1913) 139 N. W. 1087.

The stipulation in the application that the policy should not take effect until the same was delivered to the applicant while in good health, was held